

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2019-13-A

IN RE:

Application of Chem-Nuclear Systems,)	JOINT MOTION TO DISPOSE OF PUBLIC HEARING AND DECIDE THIS MATTER WITHOUT AN IN- PERSON PUBLIC HEARING
LLC a Subsidiary of EnergySolutions)	
Company for Adjustment in the Levels of)	
Allowable Costs and for Identification of)	
<u>Allowable Costs (Fiscal Year 2019-2020)</u>)	

Pursuant to S.C. Code Ann. Regs. 103-829 and other applicable rules of practice and procedure of the Public Service Commission of South Carolina (“Commission”), Chem-Nuclear Systems, LLC, an *EnergySolutions* company. (“Chem-Nuclear”) and the South Carolina Office of Regulatory Staff (“ORS”), (together, the “Parties”) hereby jointly move that the Commission admit the second amended application and amended pre-filed direct testimony of Chem-Nuclear filed on March 9, 2020, along with the report filed by ORS on March 16, 2020, into the record, dispose of the public hearing scheduled for April 23, 2020, use its discretionary authority to consider the evidence submitted into the record, decide the case based upon those written submissions, and issue an appropriate order in the above-captioned matter without holding a formal, oral, in-person public hearing. In support of this joint motion, the Parties would show the following:

1. Chem-Nuclear filed its an Application for Adjustment in the Levels of Allowable Costs and for Identification of Allowable Costs (“Application”) in the above captioned proceeding on September 26, 2019, pursuant to S.C. Code Ann. § 48-46-40(B)(4).¹

¹ See Docket No. 2019-13-A, Matter Id. 287643.

2. S.C. Code Ann. § 48-46-40(B)(4) (Supp. 2019) states that:

Within ninety days following the end of a fiscal year, a site operator may file an application with the PSC to adjust the level of an allowable cost under subsection (3), or to allow a cost not previously designated an allowable cost....The PSC shall process such application in accordance with its procedures. If such application is approved by the PSC, the PSC shall authorize the site operator to adjust allowable costs for the current fiscal year so as to compensate the site operator for revenues lost during the previous fiscal year.

Accordingly, the code delegates discretionary authority to the Commission in its processing and review of the Application.

3. Additionally, pursuant to S.C. Code Ann. § 48-46-40(B)(9)

In all proceedings held pursuant to this section, the [ORS] shall participate as a party representing the interests of the State of South Carolina, and the compact commission may participate as a party representing the interests of the compact states. The Executive Director of the Office of Regulatory Staff and the Attorney General of the State of South Carolina shall be parties to any such proceeding. Representatives from the Department of Health and Environmental Control shall participate in proceedings where necessary to determine or define the activities that a site operator must conduct in order to comply with the regulations and license conditions imposed by the department. Other parties may participate in the PSC's proceedings upon satisfaction of standing requirements and compliance with the PSC's procedures....

Counsel for ORS has reached out to representatives from the Attorney General's Office, Atlantic Compact Commission, South Carolina Department of Consumer Affairs and the Department of Health and Environmental Control and has received no opposition to the Parties' request to dispose of the in-person, public, hearing.²

4. On October 3, 2019, the Commission scheduled a hearing in Docket No. 2019-13-A for Thursday, April 23, 2020, and issued a Notice of Filing and Hearing and Prefile Testimony Deadlines ("Notice").

5. In compliance with the Commission's directions, Chem-Nuclear published the Notice in newspapers of general circulation in the affected areas by November 8, 2019.

²Representatives of the Attorney General's Office and the Atlantic Compact have informed counsel for ORS that they have no objection to a waiver of the hearing. Counsel for ORS is yet to receive responses from the other named parties. There are no other parties that have intervened.

6. No party filed a Petition to Intervene.

7. On February 28, 2020, Chem-Nuclear filed the direct testimony of Benjamin S. Smith, along with an amended Application. On March 9, 2020, Chem-Nuclear filed amended direct testimony of Mr. Smith along with a second amended Application. A verification of Mr. Smith's amended direct testimony will be filed shortly.

8. On March 16, 2020, ORS filed a report detailing its examination of Chem-Nuclear's Application and the underlying financial records of Chem-Nuclear for the operation of its low-level radioactive waste disposal facility.³ ORS identified adjustments, which were discussed with members of Chem-Nuclear's management who agreed with the adjustments.

9. On March 13, 2020, Governor Henry McMaster issued Executive Order 2020-08, which, among other things, declared a State of Emergency in South Carolina based on a determination that the 2019 Novel Coronavirus ("COVID-19") "poses an actual or imminent public health emergency for the State of South Carolina." Additionally, in Executive Order 2020-13, dated March 23, 2020, Governor McMaster declared that "the State must promote and facilitate effective 'social distancing' practices" to address the significant public health, economic, and other impacts associated with COVID-19 and to mitigate the resulting burdens on healthcare providers, individuals, and businesses in the State of South Carolina. Governor McMaster has also issued other executive orders closing schools, postponing elections, prohibiting dining inside restaurants, prohibiting public and private gatherings of more than three people, and invoking emergency governmental powers under multiple statutes. *See* Executive Orders 2020-08 through 15.

10. In its testimony, Chem-Nuclear stated, "[t]he Second Amended Application, including Second Amended Exhibit A, Exhibit B, and Amended Exhibit C, reflects the agreed

³ In the cover letter to its Report, counsel for ORS stated that ORS "does not intend to file testimony in this matter." *See* Cover Letter filed March 16, 2020.

upon changes resulting from the Office of Regulatory Staff's annual audit of our allowable costs.”⁴ Implementation of the agreed upon adjustments results in: \$3,090,852 in Fixed Costs; \$685,853 in Variable Costs; and \$156,008 in Irregular Costs.

11. In light of the scheduling challenges presented by the COVID-19 pandemic, and of S.C. Code Ann. §§ 48-40-46 *et seq.*, the ORS and Chem-Nuclear seek review of Chem-Nuclear's Application and testimony, and ORS's report, on the grounds that (1) the S.C. Administrative Procedures Act (“APA”) grants the Commission flexibility regarding hearings in contested matters and (2) notice and the opportunity to be heard was properly afforded to all parties in this proceeding.

12. Administrative agencies in South Carolina “are required to meet minimum standards of due process. Due process is flexible and calls for such procedural protections as the particular situation demands.” Stono River Envtl. Prot. Ass'n v. S.C. Dep't of Health & Envtl. Control, 305 S.C. 90, 93-94, 406 S.E.2d 340, 342 (1992) (citations and quotations omitted).

13. The Administrative Procedures Act (“APA”) provides that “[i]n a contested case, all parties must be afforded an opportunity for hearing after notice not less than thirty days....” S.C. Code Ann. § 1-23-320(A). The provisions of the APA ensure that procedural due process requirements are satisfied. The APA also provides some flexibility to agencies regarding hearings for contested cases in that “[u]nless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.” S.C. Code Ann. § 1-23-320(F).

14. Chem-Nuclear published the Notice as required by the Commission. Therefore, notice and an opportunity for a hearing have been provided.

⁴ See direct testimony of Mr. Smith, page 3.

15. The Parties respectfully request that the hearing requirement be waived and that the Commission dispose of the proceeding without requiring a formal hearing. “Parties to administrative proceedings may...waive their rights to administrative hearings and formal dispositions.” 2 Am. Jur.2d *Administrative Law* § 293.

16. Chem-Nuclear will file a verification for the amended direct testimony of Benjamin S. Smith. ORS filed a Report outlining its position. This verified testimony filed by Chem-Nuclear, along with Chem-Nuclear’s second amended Application and the Report filed by ORS fully develop the facts and issues necessary to form a complete record upon which the Commission can make a just and reasonable decision and issue an order reflecting such decision.

17. Based on the foregoing, and in light of events surrounding COVID-19 pandemic, the Parties assert that a full, in-person evidentiary hearing in this matter is not necessary.

WHEREFORE, the Parties respectfully request that the Commission (1) admit the amended pre-filed testimony of Chem-Nuclear, the second amended Application, and ORS’s Report into the record and (2) exercise its discretion to informally dispose of the proceeding without holding a formal hearing.

[SIGNATURE PAGE FOLLOWING]

Respectfully submitted,

s/ Andrew M. Bateman

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